

9000
6-56-31

Univ. of Ill. Library

51

3129

First Mortgage

ARKANSAW WATER COMPANY

TO

CONTINENTAL AND COMMERCIAL TRUST
AND SAVINGS BANK

AND

FRANK H. JONES, Trustees

November 1, 1915

Indenture, bearing date the first day of November, 1915, made and entered into by and between ARKANSAW WATER COMPANY, a corporation of the State of Arkansas, hereinafter called the Company, party of the first part, and Continental and Commercial Trust and Savings Bank, a corporation of the State of Illinois, and Frank H. Jones of Chicago, Illinois, as Trustees, hereinafter called respectively the Corporate Trustee, and the Individual Trustee and collectively the Trustees, parties of the second part:

WHEREAS, the Company has deemed it necessary to borrow money for its corporate purposes and to issue its bonds therefor, and to mortgage its property, hereinafter described, to secure the payment of said bonds, and to that end has duly authorized and directed an issue of its bonds, issued and to be issued as hereinafter set forth, to be designated as its First Mortgage Gold Bonds, such bonds to be coupon bonds in denominations of \$100, \$500 and \$1,000 each with interest coupons attached, with the fac-simile signature of the present Treasurer of the Company thereon, said bonds to be signed in its corporate name by its president or a vice-president, to be impressed with its corporate seal, attested by its secretary or an assistant secretary, and to be authenticated by the Corporate Trustee; which said bonds, coupons and Trustee's certificates of authentication are to be substantially in the forms following respectively:

[FORM OF BOND.]

UNITED STATES OF AMERICA,

STATE OF ARKANSAS.

ARKANSAW WATER COMPANY.

LITTLE ROCK, ARKANSAS.

FIRST MORTGAGE GOLD BOND.

No.....	Series.....	\$.....
---------	-------------	---------

Arkansaw Water Company (hereinafter called the Company), for value received, promises to pay to the bearer, or, if registered, to the registered holder hereof, on the first day of , at the

office or agency of the Company in the City of Chicago, Illinois, or at the option of bearer or registered holder at the office or agency of the Company in the City of New York, dollars in gold coin of the United States of America, of or equal to the present standard of weight and fineness, and to pay interest thereon from , at the rate of per centum per annum in like gold coin, payable at the option of bearer at either of said offices or agencies on the first days of and in each year according to the tenor of the respective coupons hereto attached, until such principal shall be paid. Both principal and interest of this bond are payable without deduction for any taxes, assessments or other governmental charges which the Company may be required to pay thereon, or authorized to retain therefrom under any present or future law or requirement of the United States of America, or any State, county, municipality or other governmental subdivision thereof, except so far as the Company cannot lawfully agree to pay interest hereon without such deduction.

bonds of this issue or in the performance of certain covenants of the Mortgage.

This bond may be registered as to principal in the owner's name upon the books of the Company at its office or agency, in the City of New York or City of Chicago, such registration being noted hereon, after which no valid transfer hereof can be made, except on said books, until after registered transfer to bearer, but after such registered transfer to bearer, this bond shall be again transferable by delivery. Such registration, however, shall not affect the negotiability of the coupons which shall always be payable to bearer and transferable by delivery.

No recourse shall be had for the payment of the principal or interest of this bond against any stockholder, officer or director of the Company, either directly or through the Company under any statute or by the enforcement of any assessment or otherwise, all such liability of stockholders, directors and officers being released by the holder hereof by the acceptance of this bond and being likewise waived and released by the terms of the Mortgage.

This bond shall not become obligatory until Continental and Commercial Trust and Savings Bank, one of the Trustees under the Mortgage, or its successors thereunder, shall have signed the form of certificate endorsed hereon.

IN WITNESS WHEREOF, Arkansaw Water Company has caused this bond to be signed in its name by its President or a Vice-President and its corporate seal to be hereto affixed and attested by its Secretary or an Assistant Secretary, and interest coupons bearing the fac-simile signature of its Treasurer to be attached hereto, this first day of November, 1915.

ARKANSAW WATER COMPANY,

By

President.

Attest:

Secretary.

[FORM OF COUPON.]

No.	\$.....
----------	---------

On the first day of , 19 , Arkansaw Water Company will pay to bearer, at bearer's option, at its office or agency either in the City of New York or of Chicago, dollars in gold coin, without deduction for taxes, as specified in its First Mortgage Gold Bond No. , being six months' interest then due on said bond.

This coupon will not be payable if said bond shall have been called for previous redemption.

.....,
Treasurer.

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.]

This is to certify that this bond is one of the bonds described in the within mentioned mortgage.

CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK,
Trustee,
By

AND WHEREAS, the Board of Directors of the Company and the stockholders holding all its outstanding stock have regularly authorized the issue of said bonds and the making of this Indenture at meetings thereof respectively duly convened and held; and

WHEREAS, all other things necessary to make the said bonds when duly certified by the Trustee valid, binding and legal obligations of the Company, and to make this Indenture a valid, binding and legal instrument for the security thereof have been done and performed and the issue of said bonds, as in this Indenture provided, has been in all respects duly authorized:

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That Arkansaw Water Company in consideration of the premises and of one dollar to it

duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, in order to secure the payment both of the principal and interest of the bonds aforesaid, according to their tenor and effect, hath granted, bargained, sold, released, conveyed, assigned, transferred, pledged, set over and confirmed, and by these presents doth grant, bargain, sell, release, convey, assign, transfer, pledge, set over and confirm unto Continental and Commercial Trust and Savings Bank and Frank H. Jones, as Trustees and to their successors in said trust and to their assigns forever, all the following described properties—that is to say:

I.

All and singular its water works system known as the water works of the Arkansaw Water Company, situate in and near the cities of Little Rock and Argenta and the Town of Pulaski Heights, in the County of Pulaski, State of Arkansas, and all its real estate, rights and interests in lands now owned or hereafter acquired and used in connection with said water works system, together with all buildings and machinery thereon, and all its pipes and mains, rights, privileges and franchises now held or owned or hereafter acquired by it, and any and all other property and estate, real, personal or mixed, now held or owned or which may hereafter be acquired by said Arkansaw Water Company, and all its tolls, rents, incomes and profits, together with all tenements, hereditaments and appurtenances to any of the same belonging, and also all deeds, mortgages, leases, contracts and all muniments of title to any and all of said real and personal property and estate.

The lands at present hereby conveyed are situate in the County of Pulaski, State of Arkansas, and are described as follows:—

PARCEL ONE: All right, title and interest of the party of the first part in and to all the following lands lying in the County of Pulaski and State of Arkansas, to-wit:—The north half of the southeast quarter of the southwest quarter: and the southwest quarter of the southwest quarter of

Section thirty-three (33): and the southeast quarter of the southeast quarter of Section thirty-two (32), all in Township Two (2), North, Range Twelve (12) West. Being the same that was sold and conveyed unto the Arkansaw Water Company, hereinafter named, by Zeb Ward, et ux, by deed bearing date February 26th, 1887 and recorded in Record Book 19, page 89, and Deed dated November 21st, 1889 and recorded in Deed Record 28, page 481, in the office of the Clerk of the Circuit Court and Ex-Officio Recorder within and for said County.

PARCEL Two: All right, title and interest of the party of the first part in and to all the east fractional part of the northeast quarter of the southwest quarter of Section Thirty-three (33), beginning at the southeast corner of said tract and running thence west three and 50/100 chains, thence north four chains, thence down the south bank of the Arkansas River to the point of beginning, in Township Two (2) North, Range Twelve (12) West, containing 70/100 acres. Being the same that was sold and conveyed unto the Arkansaw Water Company, hereinafter named, by Zeb Ward et ux by Deed bearing date November 21st, 1889 and recorded in Deed Book 28, page 482, in said office.

PARCEL THREE: All right, title and interest of the party of the first part in and to all the following piece of land, described as follows:— Beginning at point sixteen and ninety-four hundredths (16.94) chains north of the quarter section corner on south side section thirty-three (33) Township Two (2) N. Range twelve (12) West, and run north two and thirty hundredths (2.30) chains to Arkansas River, thence down south bank of said River, to point immediately east of beginning point, and thence west one and ninety-two hundredths (1.92) chains to point of beginning, containing twenty-two hundredths (0.22) of an acre more or less. Being the same that was sold and conveyed unto the Arkansaw Water Company, hereinafter named, by Zeb Ward et ux, by deed bearing date December 19th, 1893, and recorded in Deed Book 42, page 450, in the office of the Clerk of Circuit Court and Ex-Officio Recorder within and for said County.

The foregoing tracts of real estate are those sold and conveyed unto the party of the first part hereto under its former name and title "Home Water Company" by the Arkansaw Water Company, now known as the City of Little Rock Water Works Company, in and by its certain deed dated January 13th, 1902, and recorded in Deed Record No. 69, page 350, in the office of the Clerk of the Circuit Court and Ex-Officio Recorder within and for the County of Pulaski, in the State of Arkansas, on or about the 24th day of February, 1902.

PARCEL FOUR: One hundred and twenty-five feet off of the east end of lots eleven (11) and twelve (12) in Block two hundred and eighteen in the City of Little Rock, being the property sold and conveyed unto the party of the first part hereto by W. J. Turner, Agent, in and by his certain deed dated January 6th, 1890, and recorded in the office of said Clerk in Deed Book 29, page 275.

PARCEL FIVE: Lots Ten (10), Eleven (11) and Twelve (12) in Block Five (5) in East Argenta, Pulaski County, Arkansas, being the property sold and conveyed unto the party of the first part hereto by Rudolph Fink, et ux in and by their certain deed dated April 6th, 1894, and recorded in said office in Deed Book 44, page 259.

PARCEL SIX: Lot six (6), Block Six (6) in East Argenta, located on part of south 1/2 S. E. 1/4, Section 35, Township 2 North, Range 12 West, being the property sold and conveyed unto the party of the first part hereto by Clay E. Smith in and by his deed dated July 18th, 1906, and recorded in said office in Deed Book 91, page 214.

PARCEL SEVEN: All right, title and interest of the party of the first part hereto in and to a tract of land lying in the S. E. corner of the S. W. 1/4 and in the S. W. cor. of the S. E. 1/4 of Sec. 34, T. 2 N., Range 12 W., containing 1 1/4 acres more or less and described more fully as follows: Commencing at a point on the township line 2370 feet W. of the cor. of Secs. 34 and 35, Twp. 2 N., R. 12 W. (said point now in

Arkansas River) thence N. 13 deg. 34' W. 180 feet, thence N. 61 deg. 19' West 483 feet, thence S. 45 deg. 56' W. 145 feet to the left bank of the Arkansas River, thence in an easterly direction along the left bank of the Arkansas River to the point of beginning, containing 1 1/4 acres more or less, being the property mentioned or described in a certain deed dated October 25th, 1900, and recorded in said office in Deed Record 63, page 517.

PARCEL EIGHT: All right, title and interest of the party of the first part in and to that part of lots 29, 30, and 31 of Worthens Survey of the S. E. 1/4 of Section 33 T. 2 N., R. 12 W. bounded as follows: Beginning 5.05 chains north of the 1/4 Section corner on the south side of said Section 33 and run north 11.89 chains to iron pin, thence East 2.50 chains to iron pin, thence along the Arkansas River bank to the N. E. corner of Lot 29, thence S. 6 1/2 deg. W. 6.88 chains to S. E. corner of tract, thence west 3.00 chains, thence N. 66 1/2 deg. W. 3.25 chains, thence N. 74 1/4 deg. W. 6.00 chains and thence N. 63 1/2 Degrees W. 4.60 chains to point of beginning, containing 18.65 acres, being the property described in a deed by Zeb Ward et ux, dated February 5th, 1890, and recorded in said office in Record Book of Deeds 29, page 273, and by W R. Worthen et ux by their certain deed dated February 9th, 1892 and recorded in said office in deed record 36, page 486.

Excepting therefrom and thereout, nevertheless, all that portion thereof heretofore sold unto H. C. Bateman, by deed dated February 24th, 1892, and recorded in said office in Record Book of Deeds 36, page 551, said portion so sold and conveyed by said deed last mentioned being described as follows, to-wit:—

Beginning at a point ten hundred and sixty (1060 ft.) East of the 1/4 Section corner on the South side of Section Thirty-three (33), Township 2 North, Range 12 West and run West 2.81 chains, thence north six and one half (6 1/2) degrees east, about nine chains to the south bank of the Arkansas River, thence down said River and along the South bank thereof to the West boundary of the land conveyed by R. W.

Worthen to the Directors of the Arkansas Deaf Mute Institute at or near the northeast corner of Lot Twenty-nine (29) of Worthen's subdivision of the Southeast 1/4 Section Thirty-three (33) aforesaid, thence South six and one-half ($6\frac{1}{2}$) degrees west, 6 88/100 chains to the point of beginning. Said land is situated in Lot twenty-nine (29) of Worthen's subdivision aforesaid, and contains 3 01/100 acres more or less, leaving the quantity of land last hereby conveyed 15.64 acres more or less.

Also a tract in S. 1/2 S. E. 1/4 S. W. 1/4 Section 33 T. 2 N., R. 12 W., beginning 5.05 chains north of 1/4 Section corner on south side said Section 33 and run North 4.95 chains, thence W. 9.53 chains, thence S. 62 1/2 degrees E. 10.74 chains to beginning, containing 2.40 acres, lying and being north of the County Road. Said property last described is contained in the aforesaid last mentioned deed from Zeb Ward *et ux*, dated February 5th, 1890.

PARCEL NINE: Lot two (2) Block eleven (11) Park View Addition to Little Rock, Arkansas, being the property sold and conveyed unto the Arkansaw Water Company by G. M. Gadsby and wife by deed dated December twenty-seventh, 1915, and recorded in said office, in and for the County of Pulaski, in the State of Arkansas, on or about the 17 day of January, 1916.

PARCEL TEN: A tract 125' square in the northeast quarter, southwest quarter, Section Thirty-three (33) Township 2 North, Range 12 West, Pulaski County, Arkansas, more particularly described as follows:

"Begin at a point on the east and west center line through the said southwest quarter of Section 33, Nine hundred twenty-one and seventy-six one hundredths feet (921.76') east of the stone corner at the center of said southwest quarter Section 33, thence east One hundred twenty-five (125) feet to the southeast corner of the tract in the name of W. F. Booth described in Pulaski County Deed Record Book No. 113, Page 356; thence North with the east line of said W. F. Booth tract 125 feet; thence West one hundred twenty-five (125) feet; thence south One hundred twenty-five (125) feet to point of beginning; containing 15,625 square

feet". And also all the leasehold interest of the Arkansaw Water Company in and to the premises described in the deed next hereinafter mentioned, and all easements, rights of way, privileges and options and rights whatsoever thereby transferred to it, all of the property in this Parcel Ten described, conveyed or transferred being that conveyed and transferred unto the Arkansaw Water Company by the Capital City Water Company in and by its deed dated the 18th day of January, 1916, and recorded in said office, on or about the 18th day of January, 1916.

II.

Also all buildings, stand pipes, reservoirs, wells, machinery, mains, pipes, pipe lines, water works plants, tanks, shops, structures, equipment, fixtures, engines, boilers, pumps, tools, meters, appliances and all other apparatus which are now owned or may hereafter be acquired by the Company.

III.

All corporate and other franchises, ordinances, permits, licenses, rights, easements, rights of way, leases and leasehold interests, grants, privileges and immunities belonging to or which may be hereafter owned, held or enjoyed by the Company.

IV.

All other property of the Company, real and personal, which it now owns or may hereafter acquire or in which it may have or acquire any interest.

Together with all and singular the tenements, hereditaments and appurtenances belonging or in any wise appertaining to the aforesaid property or any part thereof; with the reversion and reversions, remainder and remainders, tolls, rents, revenues, issues, income, product and profits thereof, and all the estate, right, title, interest and claim whatsoever, at law as well as in equity, which the Company now has or may hereafter acquire in and to the aforesaid property and franchises and every part and parcel thereof.

Specifically reserving and excepting, however, from the lien of this Indenture, all accounts receivable, bills receivable, cash on hand or in bank, investments of reserve funds, and such funds themselves in whatsoever form they may assume, choses in action, contracts, shares of stock and bonds, provided, however, and it is hereby expressly agreed, that if (1) default shall be made in the payment of any interest on any bond hereby secured, and such default shall continue for ninety days, or (2) default shall be made in the payment of any principal hereby secured, or (3) default shall be made hereunder by the Company in the observance or performance of any other of the covenants, agreements or conditions on its part in this Indenture contained, and such default shall continue for ninety days after written notice to the Company by the Trustees or by any holder of the bonds hereby secured and then outstanding, then and in every such event, all the following property then held, owned and possessed by the Company, viz.: all accounts receivable, bills receivable, cash on hand and in bank, investments of reserve funds and such funds themselves, in whatsoever form they shall then be, choses in action, contracts, and all shares of stock and bonds, shall forthwith become and be subject to the lien of this Indenture, and each of them or the evidences thereof, shall on demand be delivered to the Trustees.

TO HAVE AND TO HOLD all said properties, real and personal, mortgaged and conveyed by the Company as aforesaid or intended so to be, unto the Trustees and their successors and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, for those who shall hold the bonds and coupons issued and to be issued hereunder, or any of them, without preference of any of said bonds and coupons over any others thereof by reason of priority in the time of the issue, maturity or negotiation thereof, or otherwise howsoever.

IT IS HEREBY COVENANTED, DECLARED AND AGREED, by and between the parties hereto, that all such bonds and coupons are to be issued, certified and delivered, and that all property subject or to become subject

hereto is to be held subject to the further covenants, conditions, uses and trusts hereinafter set forth, and the Company, for itself and its successors, doth hereby covenant and agree to and with the Trustees, for the benefit of those who shall hold said bonds and interest coupons, or any of them, as follows:

ARTICLE I.

EXECUTION AND ISSUE OF BONDS.

SECTION 1. This Indenture creates a continuing lien to secure the full and final payment of the principal and interest of all bonds which may, from time to time, be made, authenticated and delivered hereunder. The amount of bonds which may be so made, authenticated and delivered hereunder is not limited except as hereinafter specifically set forth, and except that the amount of bonds issued and outstanding hereunder shall at no time exceed the limit of indebtedness of the Company as fixed from time to time by its stockholders or the amount permitted by law. All bonds issued under and in pursuance of this Indenture and at any time outstanding shall in all respects be equally and ratably secured hereby without preference, priority or distinction on account of the actual time or times of the issue of the said bonds or of any of them, so that all bonds at any time issued and outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture, and shall all be equally secured hereby, with like effect as if they had all been made, issued and certified simultaneously on the date hereof, whether the same, or any of them, shall actually be sold or disposed of at such date, or whether they, or any of them, shall be sold or disposed of at some future date, or whether they, or any of them, shall have been authorized to be issued under the provisions of Section 2 of this Article I, or may be authorized to be issued hereafter pursuant to the provisions of Section 3, Section 4, or Section 5, of this Article I.

SECTION 2. Bonds for the aggregate principal amount of one million four hundred thousand dollars (\$1,400,000), being bonds of Series A,

bearing interest at the rate of 6% per annum and maturing November 1, 1930, in such denominations as the Board of Directors of the Company may determine, shall forthwith be executed by the Company and delivered to the Corporate Trustee and shall be authenticated by the Corporate Trustee, and delivered (either before or after the filing or recording hereof), in accordance with the order or orders of the Company, evidenced by a writing or writings signed by its President or a Vice-President and Treasurer or Assistant Treasurer.

SECTION 3. Bonds for the aggregate principal amount of one hundred and fifty thousand dollars (\$150,000) shall from time to time be executed by the Company and delivered to the Corporate Trustee and shall be from time to time authenticated by the Corporate Trustee and delivered to the Company, *provided* the net earnings of the Company, calculated as hereinafter provided, for twelve consecutive calendar months within the fourteen calendar months immediately preceding any application for authentication and delivery of such bonds, shall be, in the aggregate, not less than one and three-quarters times the interest charge for a like period upon all bonds already outstanding under this Indenture and those applied for. Bonds are to be authenticated and delivered under this Section upon receipt by the Corporate Trustee of:

(A) A copy of a resolution certified to have been adopted by the Board of Directors of the Company requesting the Corporate Trustee to authenticate and deliver such bonds, specifying the principal amount of bonds called for, and their denominations, series letter, form, interest rate, maturity and redemption provisions, and naming the officer or officers of the Company to whom such bonds shall be delivered;

(B) A certificate signed by the Treasurer or an Assistant Treasurer of the Company which shall state the net earnings of the Company for a period of twelve consecutive calendar months within the fourteen calendar months immediately preceding the application for authentication and delivery of said bonds, showing how the same have been cal-

culated and to that end specifying the gross earnings and also the respective amounts charged to the different distributive groups of operating expenses, the net earnings to be computed by deducting from the Company's gross earnings its operating expenses, including all expenditures for taxes, rentals, repairs, current maintenance, and insurance, but not deducting any charges made against surplus account for renewals, replacements, or depreciation, provided, however, that the amount included in operating expenses and deducted from gross earnings for repairs and current maintenance shall in no case be less than an amount equal to six per cent. of gross earnings.

SECTION 4. From time to time hereafter the Company, in addition to the bonds authorized to be issued under the provisions of Sections 2 and 3 of this Article I may sign, seal and deliver to the Trustee and the Trustee shall thereupon authenticate and deliver to the Company additional bonds hereby secured, when the Company shall have made any permanent improvements, extensions or additions to or about its plants or property, after the date of this Indenture (including any new or additional property acquired or constructed, but not including shares of stock, bonds, or other securities, or permanent improvements, extensions, or additions acquired or constructed as substituted property under the provisions of this Indenture with reference to the release of property from the lien hereof or with the proceeds of any property so released, or with insurance moneys received in payment of losses or with any moneys set aside or expended under the provisions of Article VI of this Indenture, *provided*, that the net earnings of the Company, calculated as hereinafter provided, for twelve consecutive calendar months within the fourteen calendar months immediately preceding any application for authentication and delivery of bonds, shall be, in the aggregate, not less than one and three-quarters times the interest charge for a like period upon all bonds already outstanding under this Indenture and those applied for. Bonds are to be certified and delivered under this Section only for an amount of principal equal to eighty

per cent. (80%) of the actual cash cost and fair value to the Company of such permanent improvements, extensions or additions, and only upon receipt by the Corporate Trustee of:

(A) A copy of a resolution certified to have been adopted by the Board of Directors of the Company requesting the Corporate Trustee to authenticate and deliver bonds, specifying the principal amount of bonds called for, and their denominations, series letter, form, interest rate, maturity, and redemption provisions, and stating the actual cash cost to the Company of the permanent improvements, extensions, or additions included in the certificate next hereinafter mentioned, and naming the officer or officers of the Company to whom such bonds shall be delivered;

(B) A certificate signed by the President or a Vice-President of the Company and by an engineer appointed by its Board of Directors and approved by the Trustees, stating in substance as follows:

(a) that in addition to the property possessed by the Company at the date of this Indenture, the Company has constructed or acquired certain permanent improvements, extensions or additions to or about its plant and property (to be described in the certificate with reasonable detail) and that such property is desirable in the profitable conduct of the business of the Company;

(b) that the Company has actually expended upon such permanent improvements, extensions or additions the amount stated in the above-mentioned resolution of the Board of Directors as the actual cash cost thereof and that the amount so expended was not, in the signers' opinion, in excess of the fair value to the Company of such permanent improvements, extensions or additions;

(c) that no part of such permanent improvements, extensions or additions, specified in such certificate, have been included in any preceding certificate made the basis of any other issue of bonds hereunder or of the withdrawal of any money held by the Trustees, or have been acquired as substituted property under the provisions of this Indenture

with reference to the release of property from the lien hereof or with insurance moneys or moneys set aside or expended under the provisions of Article VI of this Indenture.

(d) the net earnings of the Company for a period of twelve consecutive calendar months within the fourteen calendar months immediately preceding the application for authentication and delivery of bonds, showing how the same have been calculated, and to that end specifying the gross earnings and also the respective amounts charged to the different distributive groups of operating expenses; the net earnings of the Company to be computed by deducting its operating expenses, including all expenditures for taxes, rentals, repairs, current maintenance, and insurance, from its gross earnings, but not deducting any charges made against surplus account for renewals, replacements, or depreciation, provided however that the amount included in operating expenses and deducted from gross earnings for repairs and current maintenance shall in no case be less than an amount equal to six per cent. of gross earnings.

(e) that the Company is not, to the knowledge of the signers, in default in the performance of any of the terms or covenants of this Indenture.

(C) Such instruments of conveyance, assignment and transfer as may be necessary, in the opinion of counsel (who may be of counsel to the Company) selected by the Board of Directors of the Company and approved by the Trustees, to vest in the Trustees, to hold as part of the mortgaged property hereunder, all the right, title and interest of the Company in and to any property with respect to which the authentication of bonds shall be requested, or the opinion of such counsel that no such instruments are necessary for such purposes, and also the opinion of such counsel to the effect that the Company has title to such property, forming the basis of such issue of bonds, subject to no deed of trust, mortgage, lien, charge or incumbrance thereon or affecting the title thereto, prior to this Indenture, except taxes for the then current year.

Whenever under the provisions of this Indenture the gross and net earnings of the Company are required to be computed for a stated period, and any of the property of the Company shall have been owned by it during a part but not during the whole of such period, then and in every such case the gross and net earnings of such property during such part of such period as shall have preceded the acquisition thereof by the Company, shall be treated as gross and net earnings of the Company for such part of such period for the purposes of this Indenture and shall be computed on the basis hereinbefore provided.

Permanent improvements, extensions and additions in process of construction or erection and so far as actually constructed or erected and paid for, and placed under the lien of this Indenture, shall be deemed permanent improvements, extensions and additions within the meaning of this Article.

SECTION 5. From time to time hereafter the Company, in substitution for and in place of any bonds theretofore issued under any of the provisions of this Indenture, may sign, seal and deliver to the Corporate Trustee and the Corporate Trustee shall thereupon authenticate and deliver to the Company bonds hereby secured, in principal amount equal to that of the bonds in substitution for and in place of which such new bonds are signed, sealed and delivered, upon receipt by the Corporate Trustee of:

(A) A copy of a resolution certified to have been adopted by the Board of Directors of the Company requesting the Corporate Trustee to authenticate and deliver bonds, specifying the principal amount of bonds called for, and their denominations, series letter, form, interest rate, maturity, and redemption provisions, and likewise specifying the principal amount of bonds in substitution for and in place of which such new bonds are to be issued, and their series letter, serial numbers, and maturity, and naming the officer or officers of the Company to whom such new bonds shall be delivered;

(B) An amount of cash equal to the principal amount with interest thereon to maturity of all bonds in substitution for and in place of which such new bonds are to be issued, provided, however, that in lieu of the deposit of cash against the principal and interest of any particular bond or bonds, the Company may surrender such bond or bonds for cancellation with all unmatured coupons thereto appertaining.

SECTION 6. The resolution, certificates and other instruments provided for in this Article may be accepted by the Trustees as satisfactory and conclusive evidence as to the statements therein contained and shall be full authority to the Trustees for the authentication and delivery of bonds; but before authenticating and delivering an instalment of bonds the Trustees may, in their discretion, and shall, if requested in writing so to do by the holders of not less than five per cent. of the bonds then outstanding hereunder and furnished with security and indemnity satisfactory to them, cause to be made such independent investigation as they may see fit, and, in that event, may decline to authenticate or deliver such instalment of bonds unless satisfied by such investigation of the truth and accuracy of the matters so investigated. The expense of such investigation shall be paid by the Company, or if paid by the Trustees shall be repaid by the Company upon demand.

SECTION 7. The bonds and coupons to be secured hereby shall be substantially of the tenor and effect hereinbefore recited, except that at the election of the Board of Directors of the Company, expressed from time to time by resolution, (1) bonds may be issued in denominations of \$1000, \$500, and \$100; and (2) shall bear interest at such rate or rates, and shall be redeemable at such redemption price and shall be payable at such time (not, however, earlier than November 1, 1930) as may be fixed and determined by the Board and designated in said bonds when issued. The initial issue of bonds hereunder shall consist of \$1,400,000 principal amount of bonds of Series A; they shall bear interest at the rate of six per cent. (6%) per annum, shall mature November 1, 1930, and shall be redeemable at par and accrued interest and a premium of five per

cent. (5%) on par on any interest date to and including November 1, 1925, and at par and accrued interest and a premium of two per cent. (2%) on par thereafter.

No bond shall be secured hereby unless there shall be endorsed thereon the certificate of the Corporate Trustee substantially in the form hereinbefore recited, stating that such bond is one of the bonds (or temporary bonds) herein described; and such certificate shall be conclusive evidence that the bond upon which it is endorsed is duly issued and is secured hereby.

The bonds issued hereunder may be issued in series, and the bonds of each series shall be designated by a distinguishing letter or letters of the English alphabet. All bonds of any one series at any time simultaneously outstanding, shall be identical in respect of the interest rate, redemption provisions, and maturity, but bonds of the same series may be of different denominations. Irrespective of the series letter or letters, the bonds for \$1000 each shall be numbered consecutively from 1 upwards, the bonds for \$500 each from D1 upwards and the bonds for \$100 each from C1 upwards.

Any of the bonds at any time issued under this Indenture may, from time to time, at the request of the Company, be exchanged for other bonds of some one or more other series or of the same series issuable hereunder of an equal aggregate principal amount, and the Corporate Trustee, upon the request of the Company, shall authenticate and deliver bonds as specified in such request for the purpose of such exchange. In case of any such exchange, the Corporate Trustee shall forthwith cancel the surrendered bond or bonds and the accompanying coupons, and, on its written request, deliver the same to the Company.

Any holder of any bond secured hereby shall have the privilege at any time before maturity of exchanging any bond or bonds held by him for other bonds of the same maturity and interest rate, but of different denomination, and such exchange shall be made by the Company without expense to the holder on the tender for cancellation of the bond or bonds so desired to be exchanged.

SECTION 8. The Company shall keep at its office or agency in the City of New York, and in the City of Chicago and at such other place or places, if any, as shall be designated in any bond issued hereunder, books for the registration and transfer of bonds issued hereunder, which, at all reasonable times, shall be open for inspection by the Trustees or by the holder of any bond issued hereunder; and, upon presentation for such purpose at any such office or agency, the Company will register or cause to be registered therein the ownership of any bond issued under this Indenture and entitled to registration at such office, such registration being noted on the bond. After such registration no transfer shall be valid unless made on the said books by the registered owner in person, or by his duly authorized attorney, and similarly noted on the bond; but the bond may be discharged from registration by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored; and such bond may again, from time to time, be registered, or transferred to bearer, as before. Such registration, however, shall not affect the negotiability of the coupons, but every such coupon shall continue to be transferable by delivery merely, and shall remain payable to bearer.

SECTION 9. All the bonds issued hereunder shall, from time to time, be executed on behalf of the Company by its President or one of its Vice-Presidents and its corporate seal shall be thereunto affixed and attested by its Secretary or one of its Assistant Secretaries. The coupons to be attached to the bonds shall bear the fac-simile signature of the present Treasurer of the Company.

In case any of the officers who shall have signed and sealed any bonds or attested the seal thereon, shall cease to be such officers of the Company before the bonds so signed and sealed shall have been actually authenticated by the Trustee or delivered by the Company, such bonds nevertheless may be issued, authenticated and delivered with the same force and effect as though the person or persons who signed and sealed such bonds had not ceased to be such officer or officers of the Company.

Before authenticating any bonds the Trustee shall cut off, cancel and deliver to the Company all matured coupons thereon.

SECTION 10. Until permanent bonds are ready for delivery, there may be issued, authenticated and delivered in lieu of any thereof, temporary printed bonds in bearer form substantially of the tenor of the bonds hereinbefore described and of the same denominations and bearing the same serial numbers, except that no coupons shall be attached thereto, and until exchanged for permanent bonds, such temporary bonds shall be entitled to the lien and benefit of this Indenture. Upon such exchange, which the Company shall make at its own expense and without making any charge therefor, such temporary bonds shall be destroyed by the Corporate Trustee, and upon the exchange of all said bonds a certificate of such destruction shall be delivered to the Company. When and as interest is paid upon temporary bonds, the fact of such payment shall be noted thereon. The Company shall proceed with all reasonable diligence to execute and deliver said permanent bonds.

SECTION 11. Upon receipt by the Company and the Corporate Trustee of evidence satisfactory to them, of the loss, destruction or mutilation of any outstanding bond hereby secured, and of indemnity satisfactory to them, and upon surrender and cancellation of such bond if mutilated, the Company may execute, and the Corporate Trustee may authenticate and deliver, a new bond of the same series and of the like tenor bearing the same serial number, to be issued in lieu of such lost, destroyed or mutilated bond.

SECTION 12. As to all bonds registered as to principal, the person in whose name the same shall be registered shall be deemed and regarded as the owner thereof, for all purposes of this Indenture, and thereafter payment of or on account of the principal of such bond, shall be made only to or upon the order in writing of such registered holder thereof, but such registration may be changed as above provided. All such payments shall be valid and effectual to satisfy and discharge the liability

upon such bonds to the extent of the sum or sums so paid. The Company and the Trustees may deem and treat the bearer of any bond, which shall not at the time be registered as to principal, and the bearer of any interest coupon, whether the bond to which the same appertains shall be registered or not, as the absolute owner of such bond or coupon for the purpose of receiving payment thereof, and for all other purposes whatsoever, and the Company and the Trustees shall not be affected by any notice to the contrary.

ARTICLE II.

PARTICULAR COVENANTS OF THE COMPANY.

The Company hereby covenants and agrees:

SECTION 1. That it is lawfully seized and possessed of all its aforesaid mortgaged premises, property, rights, privileges and franchises and that it has good right and lawful authority to mortgage the same as provided in and by this Indenture.

SECTION 2. That it will pay the principal and interest of all the bonds duly issued hereunder, according to the terms thereof and, so far as it may lawfully contract to do so, without deduction for any taxes, assessments or other governmental charges which the Company may be required to pay thereon, or authorized to retain therefrom under any present or future law or requirement of the United States of America, or any State, county, municipality or other governmental subdivision thereof, the Company hereby agreeing, so far as it lawfully may, to pay all such taxes, assessments and other charges. As the coupons annexed to said bonds are paid they shall be cancelled. Coupons shall not be kept alive after maturity by extension thereof nor by the purchase thereof, by or on behalf of the Company. No coupon belonging to any bond hereby secured, which in any way, at or after maturity, shall have been transferred or pledged, separate or apart from the bond to which it relates, or which shall in any manner have been kept alive after

maturity by extension or by the purchase thereof by or on behalf of the Company, shall be entitled, in case of a default hereunder, to any benefit of or from this Indenture, except after the prior payment in full of the principal of the bonds issued hereunder and of all coupons and interest obligations not so transferred, pledged, kept alive or extended.

SECTION 3. That it will maintain an office or agency in each of the Cities of Chicago and New York, while any of said bonds are outstanding, where notices, presentations and demands to or upon it in respect of said bonds or their coupons may be given or made, and for the payment of the principal and interest thereof and that it will keep on file with the Corporate Trustee a written statement showing the location of the offices or agencies so from time to time maintained by it.

SECTION 4. That it will duly pay and discharge, as the same shall become due and payable, all real estate and personal taxes, assessments and governmental and other charges lawfully levied and imposed by any state, county or municipality upon the mortgaged premises, including the franchises, earnings and business of the Company; and that it will not suffer any mechanic's, laborer's, statutory or other lien which might or could be held to be prior to the lien of this Indenture, to be created or to remain outstanding upon the mortgaged property, or any part thereof; provided, however, that nothing contained in this Indenture shall require the Company to pay such tax, assessment, lien or charge so long as the Company in good faith shall contest the validity thereof, provided the security afforded by this indenture shall not be endangered by any sale or otherwise on account of any such tax or lien so contested.

SECTION 5. That it will keep all the property which is at any time covered by this Indenture, which is not fireproof and which is of a character usually insured by companies similarly situated, insured against loss or damage by fire, to a reasonable amount, by reputable insurance companies, any one loss in excess of \$5,000 to be made payable to the

Trustees as their interest may appear. The proceeds of any insurance on any part of its mortgaged property, which may be received by the Trustees shall be held and applied by the Corporate Trustee as hereinafter provided in Article V of this Indenture.

SECTION 6. That it will at all times maintain, preserve and keep its property mortgaged hereunder, and every part thereof, with the appurtenances and every part and parcel thereof, in thorough repair, working order and condition, and from time to time make all needful and proper repairs, so that at all times the value of the security for the bonds issued hereunder and the efficiency of its property hereby mortgaged shall be fully preserved and maintained, and, subject to the provisions hereof, will maintain, preserve and renew all the rights, powers, privileges, and franchises by it owned.

SECTION 7. That if it shall fail to perform any of the covenants contained in Sections 4, 5 and 6 of this Article II, the Trustees, or any receiver appointed hereunder, may make advances to perform the same in its behalf; and it hereby agrees to repay all sums so advanced in its behalf, on demand, with interest at six per cent. per annum after demand, and all sums so advanced with interest as aforesaid shall be secured hereby, having the benefit of the lien hereby created in priority to the indebtedness evidenced by said bonds and coupons; but no such advance shall be deemed to relieve the Company from any default hereunder.

SECTION 8. That it will cause this Indenture at all times to be kept recorded and filed as a mortgage, both of real estate and of personal property, in such manner and in such places as may be required by law in order to fully preserve and protect the security of the bondholders and all rights of the Trustees.

SECTION 9. That it will, upon reasonable request, execute and deliver such further instruments and do such further acts as may be

necessary or proper to carry out more effectually the purposes of this Indenture, especially to make subject to the lien hereof any property now owned or hereafter acquired by it (except the property hereinbefore specifically excepted from the lien hereof), and to transfer to any new trustee or trustees the estate, powers, instruments and funds held in trust hereunder.

SECTION 10. That it will not at any time prior to November 1, 1918, permit the aggregate of its floating or unfunded indebtedness to parties other than American Water Works and Electric Company, Inc., and the subsidiary corporations of said American Company to exceed an amount equal to forty per cent. (40%) of its gross earnings during the preceding fiscal year and that at no time thereafter and prior to November 1, 1930, shall such indebtedness exceed twenty-five per cent. (25%) of such gross earnings.

SECTION 11. That it will at any and all times upon the written request of the Trustees:

(a) permit the Trustees by their agents and attorneys to examine all the Company's books of account, records, reports and other papers, and to take copies and extracts therefrom;

(b) furnish to the Trustees a detailed and true balance sheet showing accurately the financial condition of the Company; a full and detailed statement of its earnings and expenses given month by month for and during a period of at least twelve months prior to the date of such request; and a full, complete and detailed schedule of the items of property covered by the lien hereof or intended so to be, as the Trustees may request.

The Trustees are, however, under no duty to make any such examination or to require any such balance sheet, statement or schedule.

SECTION 12. That it will not issue, or permit to be issued, any bonds hereby secured in any manner other than in accordance with the provisions of this Indenture.

ARTICLE III.

REDEMPTION OF BONDS.

The Company, at its option, may from time to time redeem all or any of the bonds issued hereunder, on any interest day, at the redemption price specified therein respectively, with accrued interest to the redemption day, and in the case of any series of bonds, the bonds may specify that until a date to be fixed in said bonds they shall be redeemable at a certain price and thereafter at another price; provided that in case of redemption of a part only of said bonds, the particular bonds to be redeemed shall be selected by the Corporate Trustee by lot; and provided also that notice of intention to redeem shall be given, by or on behalf of the Company, by publication at least once a week for four successive weeks immediately preceding said date fixed for redemption in one newspaper of general circulation published in each of the cities of New York, Chicago and Little Rock, Arkansas. Before such redemption day specified in such notice, the Company shall deposit with the Corporate Trustee an amount sufficient to redeem the bonds so designated for redemption, to be held for account of the holders thereof, and to be paid to them respectively upon presentation and surrender of said bonds; and after such redemption day and such deposit such bonds shall cease to bear interest, and such bonds shall cease to be entitled to the lien of this Indenture, and the coupons for interest maturing subsequent to that day shall be void.

All bonds so redeemed or otherwise purchased by the Trustees at the request of the Company under any provision of this Indenture shall forthwith be canceled, and the Corporate Trustee shall note hereon or on one of the originals hereof the fact of such cancellation, and thereupon deliver the bonds so canceled to the Company.

ARTICLE IV.

POSSESSION, USE AND RELEASE OF MORTGAGED PROPERTY.

SECTION 1. While not in default in the payment of the principal or interest on any bond hereby secured, or in respect to any of the

covenants, agreements or conditions on its part in this Indenture contained, the Company

1. Shall be suffered and permitted to possess, use and enjoy all the franchises, rights and property conveyed by this Indenture (other than moneys and securities which are expressly required to be deposited with the Corporate Trustee), and to receive and use the rents, issues, income, product, and profits thereof;
2. May sell or otherwise dispose of, without any release by the Trustees, free from the lien of this Indenture, (a) any machinery, equipment, tools or implements upon replacing the same with new machinery, equipment, tools or implements, of value at least equal to the original value of that so disposed of, and (b) any materials or supplies;
3. May, at any time and from time to time, without any release by the Trustees, surrender or assent to the modification of any franchise which it may hold, or under which it may be operating, provided, that (a) in the event of any such modification, the franchise, as modified, shall, in the opinion of counsel, authorize the continuance of the same or an extended business in the same or an extended territory during the same or an extended or unlimited period of time, or (b) in the event of any such surrender, the Company shall receive in exchange a new franchise, license or permit which, in the opinion of counsel, shall authorize it to do the same or an extended business in the same or an extended territory during the same or an extended or unlimited period of time, or that after the surrender of any such franchise, the Company shall still, under some other franchise, license or permit (subject to the lien of this Indenture, and free from any liens prior thereto, except taxes for the then current year), have the right, in the opinion of counsel, to conduct the same or an extended business in the same or an extended territory during the same or an extended or unlimited period of time. The words "the opinion of counsel" as used

in this subdivision 3 of this Section, mean and shall be construed to mean the written opinion, filed with the Company and with the Corporate Trustee, of counsel (who may be of counsel to the Company) appointed by the Board of Directors of the Company and approved by the Trustees.

SECTION 2. The Company may sell or otherwise dispose of any other of its property at any time covered hereby, and the Trustees shall release the same from the lien hereof upon receipt by the Corporate Trustee of:

1. A copy of a resolution certified to have been adopted by the Board of Directors of the Company, requesting such release;

2. A certificate signed by the President or a Vice-President of the Company and by an engineer appointed by the Board of Directors of the Company, and approved by the Trustees, stating in substance as follows:

(a) that the retention of such property is no longer desirable in the conduct of the business of the Company, and that the security hereby afforded will not be impaired by its release, and

(b) that the Company has sold or exchanged, or contracted to sell or exchange, the property so to be released for a consideration representing, in the opinion of the signers, its full value to the Company, which consideration may be (1) cash, or (2) partly cash and partly obligations secured by purchase money mortgage upon the property released, or (3) any other property which could be made the basis of an issue of bonds under Section 4 of Article I hereof; such consideration to be set out in reasonable detail in such certificate;

3. Any money or obligations stated in said certificate to have been received or contracted for in consideration for any such release; and if real estate or other property is included in the consideration for such release, deeds or other instruments of conveyance,

assignment or transfer sufficient, in the opinion of counsel herein-after referred to, to subject the same to the lien of this Indenture;

4. An opinion of counsel (who may be of counsel to the Company) appointed by the Board of Directors of the Company and approved by the Trustees, to the effect that any obligations included in the consideration for such release are, in his or their opinion, valid obligations, and that any purchase money mortgage securing the same is sufficient to afford a first lien upon the property to be released, and that any deeds or other instruments of conveyance, assignment or transfer covering any property included in the consideration for such release, are sufficient to subject the same to the lien of this Indenture, free from any liens prior hereto except taxes for the then current year; or an opinion of such counsel to the effect that no instruments of conveyance, assignment or transfer are necessary to vest in the Company the consideration received for such release, or to subject the same to the lien of this Indenture.

Provided, however, that the water works system and plant of the Company in the City of Argenta (known as its Argenta plant), shall not be released from the lien hereof unless at the time of any such release there shall be paid to the Corporate Trustee in consideration thereof, at least the sum of \$250,000 in cash, and, if the consideration actually received by the Company upon any such sale of the Argenta plant shall be less than the sum of \$250,000, the Company shall not be entitled to a release of said plant from the lien of this Indenture until it shall have made up and deposited with the Trustee the necessary balance of said sum out of its other funds. This proviso, however, shall have no application to releases requested by the Company of any specific parcel of real estate forming a part of said Argenta plant of the Company, but not affecting the substantial value or use of the said Argenta plant.

The resolutions and certificates, and the instruments and opinions hereinbefore provided for, shall be full authority to the Trustees for making any such release; but before making any such release the Trustees

may, in their discretion, and shall, if requested in writing so to do by the holders of not less than five per cent. in amount of the outstanding bonds and furnished with security and indemnity satisfactory to them, cause to be made such independent investigation as they may see fit, and, in that event may decline to take action unless satisfied by such investigation of the truth and accuracy of the matters so investigated. The expense of any such investigation shall be paid by the Company, or if paid by the Trustees, shall be repaid by the Company upon demand, with interest after demand at the rate of six per cent. per annum.

Any new property acquired by the Company by exchange or purchase, to take the place of any property released hereunder, shall forthwith and without further conveyance become subject to the lien of and be covered by this Indenture; but if requested by the Trustees the Company shall convey the same to the Trustees by proper deeds upon the trusts and for the purposes of this Indenture.

SECTION 3. In case the mortgaged property shall be in the possession of a receiver, lawfully appointed, the powers hereinbefore conferred upon the Company with respect to the sale or other disposition of property covered hereby may be exercised by such receiver with the consent of the Trustees but not otherwise; and if the Trustees shall be in possession of the mortgaged property under any provision of this Indenture, then such powers may be exercised by the Trustees in discretion.

No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Trustee to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser of machinery or equipment be under obligation to ascertain or inquire into the occurrence of the event on which any such sale is hereby authorized.

ARTICLE V.

APPLICATION OF MONEY RECEIVED BY THE TRUSTEES.

All obligations received by the Trustees under the provisions of Section 2 of Article IV of this Indenture shall be held and collected by the Corporate Trustee, which shall, however, be under no liability or accountability whatsoever for the collection thereof (interest as received thereon meanwhile to be paid over to the Company, not being then in default hereunder to the knowledge of the Trustees).

All moneys received by the Trustees as principal of such obligations or as proceeds of released property or of property taken by the power of eminent domain or as insurance money shall be held by the Corporate Trustee and shall be paid over from time to time by the Corporate Trustee to or upon the order of the Treasurer of the Company to reimburse the Company for cash expended by it since the execution and delivery of this Indenture (and whether prior or subsequent to the receipt of such money by the Trustees, or the release or taking of property, proceeds of which make up or are included in such money) (1) for the construction, purchase or acquisition of permanent improvements, extensions or additions to its property such as might have been made the basis of an application for additional bonds under the provisions of Section 4 of Article I of this Indenture, or, (2) for the replacement of property destroyed by fire (to the extent that insurance moneys arising from such loss are in the hands of the Trustees). Such payments shall be made by the Corporate Trustee upon receipt by it of:

(A) A copy of a resolution certified to have been adopted by the Board of Directors of the Company stating the actual cash cost to the Company of the permanent improvements, extensions and additions (or replacements of property destroyed by fire) described in the certificate next hereinafter mentioned and requesting reimbursement of such cash expenditures.

(B) A certificate signed by the President or a Vice-President of the Company and by an Engineer appointed by its Board of Directors and approved by the Trustees stating

(a) that the Company has made certain permanent improvements, extensions or additions to its property (describing the same with reasonable detail), or has made certain replacements of property destroyed by fire (describing the same with reasonable detail) and that the same are desirable in the profitable conduct of the Company's business;

(b) that the Company has actually expended on the same the amount specified in the resolution last above mentioned as the cash cost thereof, and that the amount so expended was not, in the signers' opinion, in excess of the fair value to the Company of such permanent improvements, extensions or additions or of such replacements; said certificate shall further distinctly specify whether any of such expenditures, and if so what portion, were expended to replace property destroyed by fire.

(c) that no part of such cash cost has been included in any previous certificate made under the provisions of this Article V or of Section 4 of Article I of this Indenture.

(d) that the Company is not, to the knowledge of the signers, in default in any of the terms, covenants or conditions of this Indenture.

(C) Such instruments of conveyance, assignment and transfer as may be necessary in the opinion of counsel (who may be of counsel to the Company), appointed by the Board of Directors of the Company and approved by the Trustees, to vest in the Trustees to hold as part of the mortgaged property hereunder all the right, title and interest of the Company in and to such permanent improvements, extensions or additions or the opinion of counsel that no such instruments are necessary for such purposes and also the opinion of such counsel that the Company has absolute title to such permanent improvements, extensions or additions subject to no lien or incumbrance prior to the lien of this Indenture except taxes for the then current year.

The resolutions and certificates, and the instruments and opinions hereinbefore in this Article provided for, shall be full authority to the Trustees for the payment of any moneys as requested therein; but before making any such payment the Corporate Trustee may, in its discretion, cause to be made such independent investigation as it may see fit, and may decline to take action unless satisfied by such investigation of the truth and accuracy of the matters so investigated. The expense of any such investigation shall be paid by the Company, or, if paid by the Trustees, shall be repaid by the Company upon demand, with interest after demand at the rate of six per cent. per annum.

Any such moneys in the hands of the Corporate Trustee, and not theretofore paid over or requested to be paid over to reimburse the Company as aforesaid shall, on the election and in accordance with the request of the Company evidenced by a copy of a resolution certified to have been adopted by its Board of Directors, be applied by the Corporate Trustee to the purchase of bonds issued and outstanding hereunder at not exceeding their redemption price or to the redemption of bonds under and in accordance with the provisions of Article III of this Indenture.

Before making any purchase of bonds the Corporate Trustee shall by notice published once a week for four successive weeks in one daily newspaper published in each of the Cities of Chicago and New York, advertise for written proposals to sell to it bonds; and the Corporate Trustee to the extent of the funds then in its hands and requested by the Company to be so applied, shall purchase the bonds so offered at the lowest price asked therefor, and reasonable notice shall be given by the Corporate Trustee to the owner or owners of the bonds whose proposals may be accepted. Should there be two or more proposals at the same price aggregating more than the amount which the Corporate Trustee has available for investment after having accepted all proposals at the lowest price, such proposals shall be accepted ratably, provided, however, that no proposal shall be accepted by the Corporate Trustee at prices in excess of the redemption price; and provided further that the Corporate Trustee shall have the right to reject any or all proposals in whole

or in part, if it can at the time of opening said proposals purchase the requisite amount of said bonds or any part thereof at a lower price than the lowest price offered by the said proposals.

In the event that the Company shall permit any money received under the terms of this article to remain in the hands of the Corporate Trustee for more than two years, the Corporate Trustee may in its discretion purchase bonds as herein provided without request by the Company.

ARTICLE VI.

MAINTENANCE AND IMPROVEMENT FUND.

The Company covenants and agrees that it will, in the fiscal year ending upon the 30th day of April, 1917, and in each fiscal year thereafter during the existence of this trust, set aside, as a Maintenance and Improvement Fund, a sum equal to twelve per cent. (12%) of its gross earnings derived from the operation of the mortgaged property in said respective fiscal years, and will also, during said fiscal year ending April 30, 1917, set aside for said purpose a like proportion of its earnings during the six months' period ending April 30, 1916, so far as such earnings shall not have been so expended in such proportion during said six months' period. One-half of the amount so to be set aside shall, annually, be charged to and included in the operating expenses of the Company for all the purposes of this Indenture. All expenditures made by the Company during each of said years for repairs, renewals, maintenance and replacements, shall, at the end of each month, be credited to the fund established as aforesaid. In case the sums so credited in any fiscal year shall not, at the end thereof, have amounted in the aggregate to twelve per cent. (12%) of the gross earnings of the Company for such year, the Company shall, within ninety (90) days from the expiration of such fiscal year, deposit in cash with the Corporate Trustee, as and for an improvement reserve, a sum equal to the excess of said twelve per cent. (12%) of the gross earnings for such year over and

above the amount actually expended and credited by the Company as aforesaid. The Company shall, within said ninety (90) days render to the Corporate Trustee a statement of its gross earnings and of the amounts expended by it as aforesaid signed by its President or Vice-President, and Treasurer or Assistant Treasurer, and the excess of the percentage above provided for, over said expenditures, as shown by said statement, shall be the amount to be deposited with the Corporate Trustee. Any indebtedness incurred by the Company prior to the end of the fiscal year for repairs, renewals, maintenance and replacements may be included as an expenditure during said fiscal year, provided the work covered thereby be actually done, but payments of such indebtedness thereafter made shall not, in that event, be credited to said fund upon any statement or certificate made or rendered under any of the provisions of this Indenture.

Provided, however, (1) that if in any fiscal year the Company shall expend and set aside for the purposes hereinbefore in this Article set forth any sum in excess of the amount herein covenanted to be so expended or set aside, the amount of such excess shall be credited to the Company on account of its covenant with respect to any succeeding year or years within a period of three years then next ensuing; and (2) in lieu of deposit of cash with the Corporate Trustee, the Company may deliver to the Corporate Trustee a statement signed by its President or a Vice-President, and its Treasurer or an Assistant Treasurer, setting forth that the Company has actually expended during the last fiscal year an amount of cash, to be therein stated, for the construction or acquisition of permanent improvements, extensions or additions to or about its plants or property, describing the same in reasonable detail, which statement shall thereupon be accepted *pro tanto* by the Corporate Trustee as the equivalent of a cash payment to the amount so set forth.

All amounts paid to the Corporate Trustee under the provisions of this article shall be held by the Corporate Trustee as a separate fund not subject to the provisions of Article IV or of Article V of this Indenture, and shall from time to time be paid over by the Corporate Trustee to

the Company as may be requested and directed by resolution certified under seal of the Company by its Secretary or an Assistant Secretary to have been adopted by its Board of Directors to reimburse the Company for moneys actually expended by it, subsequent to the date of this Indenture, for the construction of permanent improvements, extensions or additions to or about its plants or property, or for any amount actually expended by it during the fiscal year then last past for repairs, renewals, maintenance or replacements in excess of the amount covenanted by it to be expended or set aside for such purposes during such year.

PROVIDED, HOWEVER, that the Company hereby covenants, that no bonds shall be issued under any of the provisions of this Indenture, to reimburse the Company for any part of any expenditures which shall have been reimbursed to it at any time by the Corporate Trustee under the provisions of this Article VI of this Indenture or which shall have been reported in lieu of cash to the Corporate Trustee under the provisions of this article.

In the event that at any time the Board of Directors of the Company deems that the accumulation of cash in the hands of the Corporate Trustee under the provisions of this Article VI of this Indenture, is in excess of the amount then reasonably required for the purposes in this Article VI specified, the Board of Directors may, by resolution, direct the Trustee to apply all or any part of any fund then held by it under the provisions of this Article VI to the purchase or redemption of bonds then outstanding hereunder in accordance with the provisions of Article V of this Indenture.

All amounts required by State laws or by any public service commission or similar body, to be set aside from earnings or surplus for sinking funds or reserves for depreciation or renewals, shall be applied and considered as a part of the fund to be set aside under the provisions of this Article, so that a double charge shall not be made for this purpose.

ARTICLE VII.

REMEDIES UPON DEFAULT.

SECTION 1. If default shall be made in the payment of the principal of or any interest on any bond hereby secured, and such default shall continue for ninety days, or if default shall be made hereunder by the Company in the observance or performance of any other of the covenants, agreements or conditions on its part in this Indenture contained and such default shall continue for ninety days after written notice to the Company by the Trustees or by any holder of the bonds hereby secured and then outstanding, then (a) upon the election of the Trustees, or (b) upon the election of the holders of twenty-five per cent. in interest of the bonds hereby secured and then outstanding, evidenced by an instrument or instruments in writing, signed by them and delivered to the Trustees, the entire principal sum secured hereby and the interest accrued thereon shall become and be immediately due and payable; subject, however, to the right of a majority in interest of the holders of the bonds then outstanding to annul such election and destroy its effects or to waive any default hereunder at any time before any sale, hereunder, by written notice to the Company and the Trustees, if, before any such sale, all agreements with respect to which default shall have been made shall be fully performed, and all arrears of interest upon all bonds secured hereby and the principal of any bonds which have matured in due course by their terms and the reasonable charges and expenses of the Trustees, their agents and attorneys and all other indebtedness secured hereby, except the principal of bonds whose date of maturity as specified on their face has not yet arrived and interest accrued since the last interest day, shall be paid, or the amount thereof shall be paid to the Trustees for the benefit of those entitled thereto.

SECTION 2. If (1) default shall be made in the payment of any interest on any bond hereby secured, and such default shall continue for ninety days, or (2) default shall be made in the payment of any

principal hereby secured, or (3) default shall be made hereunder by the Company in the observance or performance of any other of the covenants, agreements or conditions on its part in this Indenture contained, and such default shall continue for ninety days after written notice to the Company by the Trustees or by any holder of the bonds hereby secured and then outstanding, the Company, upon demand of the Trustees, shall forthwith surrender to the Trustees the actual possession of, and it shall be lawful for the Trustees, by such officer or agent as they may appoint, to take possession of all the property hereby conveyed or intended to be (with the books, papers and accounts of the Company), and to hold, operate and manage the same, and from time to time make all needful repairs, and such alterations, additions, advances and improvements as to it shall seem wise; and to receive the rents, income, issues and profits thereof, and out of the same to pay all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Trustees, their agents and counsel, and any charges of the Trustees, and any taxes and assessments and other charges prior to the lien of these presents which the Trustees may deem it wise to pay, and all expenses of such repairs, alterations, additions and improvements, and to apply the remainder of the moneys so received by them, first, to the payment of the interest instalments, which are due and unpaid, in the order of their maturity, with interest at six per cent. after maturity (save and except as otherwise provided with regard to extended and pledged coupons in Section 2 of Article II of this Indenture); and thereafter, if the principal of said bonds is due, to the payment of said principal and accrued interest thereon *pro rata* without any preference or priority whatever. Whenever all that is due upon such interest instalments and upon the principal of such bonds, and under any of the terms of this Indenture shall have been paid and all defaults made good, the Trustees shall surrender possession to the Company, its successors or assigns. The same right of entry, however, shall exist upon any subsequent default.

SECTION 3. If (1) default shall be made in the payment of any interest on any bond hereby secured, and such default shall continue for ninety days, or (2) default shall be made in the payment of any principal hereby secured, or (3) default shall be made hereunder by the Company in the observance or performance of any other of the covenants, agreements or conditions on its part in this Indenture contained, and such default shall continue for ninety days after written notice to the Company by the Trustees or by any holder of the bonds hereby secured and then outstanding, it shall be lawful for the Trustees, by such officer or agent as they may appoint, with or without entry, to sell all the property and appurtenances hereby conveyed or intended to be, or which may be covered hereby or in any manner may be subject to this Indenture, as an entirety, or in such parcels as the holders of a majority in amount of the bonds secured hereby shall, in writing, request, or in the absence of such request, as the Trustees may determine, at public auction, at some convenient place in the City of Little Rock, Arkansas, having first given notice of such sale by publication in at least one daily newspaper published in the City of Little Rock, Arkansas, at least once a week for four successive weeks next preceding such sale, and by like publication in at least one daily newspaper published in each of the cities of Chicago and New York, and any other notice which may be required by law, and from time to time to adjourn such sale in their discretion by announcement at the time and place appointed for such sale or for such adjourned sale or sales without further notice except such as may be required by law, and upon such sale to make and deliver to the purchaser or purchasers a good and sufficient deed or deeds for the same, which sale, as likewise any sale made under this Indenture by virtue of any judicial proceedings, shall be a perpetual bar, both in law and in equity, against the Company, and all persons and corporations lawfully claiming or to claim by, through or under it.

SECTION 4. In case of the breach of any of the covenants or conditions of this Indenture, the Trustees shall have the right and power to

take appropriate judicial proceedings for the protection and enforcement of their rights and the rights of the bondholders hereunder. If (1) default shall be made in the payment of any interest on any bond hereby secured and such default shall continue for ninety days, or (2) default shall be made in the payment of any principal hereby secured, or (3) default shall be made hereunder by the Company in the observance or performance of any other of the covenants, agreements or conditions on its part in this Indenture contained, and such default shall continue for ninety days after written notice to the Company by the Trustees or by the holder of any of the bonds hereby secured and then outstanding, the Trustees may, either after entry, as hereinbefore provided, or other entry, or without entry, proceed by suit or suits at law or in equity or by any other appropriate remedy, to enforce payment of the bonds hereby secured and to foreclose this mortgage and to sell the mortgaged premises and all property covered by this Indenture under the judgment or decree of a court or courts of competent jurisdiction, and it shall be obligatory upon the Trustees to take action either by such proceedings or by the exercise of their powers with respect to entry or sale as they may determine, upon being requested so to do by the holders of twenty-five per cent. in interest of the bonds hereby secured and then outstanding, and upon being indemnified as hereinafter provided, in any case of default which shall occur and shall have continued as hereinbefore specified in this Section. No bondholder or bondholders shall be entitled to take any proceedings hereunder or upon or in respect of any of the bonds and coupons hereby secured except in case of refusal or neglect of the Trustees to act after such continued breach and such request and tender of indemnity as aforesaid.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustees or to the bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 5. Anything in this Indenture to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right, by an instrument in writing executed and delivered to the Trustees, to direct the method and place of conducting all proceedings to be taken for any sale of the mortgaged property, or for the foreclosure of this Indenture, or for the appointment of a receiver, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions hereof.

SECTION 6. In case of a default hereunder of the character specified in Section 2 of this Article and its continuance for the period, if any, therein provided, and upon the filing of a bill in equity, or other commencement of judicial proceedings to enforce the rights of the Trustees and of the bondholders, the Trustees, as a matter of right, shall be entitled to the appointment of a receiver of the property hereby mortgaged, and of the income, rents, issues and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

SECTION 7. Upon any sale being made either under the power of sale hereby given or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, the principal of all bonds then outstanding and secured hereby, if not previously due, shall at once become and be due and payable.

SECTION 8. Upon any such sale, whether made under the power of sale hereby given or under judgment or decree of court or otherwise, any bondholder or bondholders or the Trustees may bid for and purchase the mortgaged property, and upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in their own absolute right without further accountability; and any purchaser at any such sale may, in paying purchase money, turn in any of said bonds and coupons hereby secured in lieu of cash to the amount which shall, upon

distribution of the net proceeds of such sale, be payable thereon, subject, however, to the provisions with respect to extended and pledged coupons contained in Section 2 of Article II of this Indenture. Said bonds and coupons, in case the amount so payable thereon shall be less than the amount due thereon, shall be returned to the holders thereof after being properly stamped to show partial payment.

The receipt of the Trustees or of the officer making a sale under judicial proceedings shall be a sufficient discharge to the purchaser or purchasers at any sale for his or their purchase money, and such purchaser or purchasers, his or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Trustees or of such officer therefor, be obliged to see to the application of such purchase money, or be in anywise answerable for any loss, misapplication or non-application thereof.

SECTION 9. The proceeds of any such sale, whether made under the power of sale hereby given or under judgment or decree of Court or otherwise, together with any other sums which may then be held by the Corporate Trustee under any of the provisions of this Indenture as part of the trust estate, or the proceeds thereof, shall be applied as follows:

First: To the payment of all taxes, assessments or liens prior to the lien of this Indenture, except those subject to which such sale shall have been made, and of all costs and expenses of such sale, including a reasonable compensation to the Trustees, their agents and attorneys, and of all other sums payable to the Trustees hereunder by reason of any expenses, liabilities or advances made by either of them.

Second: To the payment of the whole amount then owing and unpaid upon the bonds hereby secured for principal and interest, with interest on the overdue instalments of interest, at the same rate borne by the principal of the said bonds respectively according to their terms, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal and interest ratably, without preference or priority of principal over interest,

or of interest over principal, or of any instalment of interest over any other instalment of interest (save and except, however, as otherwise provided with regard to extended and pledged coupons in Section 2 of Article II of this Indenture).

Third: Any surplus then remaining to the Company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

SECTION 10. In case of a default on its part, as aforesaid, neither the Company nor any one claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any property subject to the lien hereof may be situated, in order to prevent or hinder the enforcement or foreclosure of this Indenture, or the absolute sale of the property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, and the Company, for itself and all who may claim through or under it hereby waives the benefit of all such laws, and further waives any and all right to have the estates comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof and agrees that the Trustees or any court having jurisdiction to foreclose such lien may sell the mortgaged property as an entirety.

SECTION 11. No waiver of any default hereunder, whether by the Trustees or the bondholders, shall extend to or shall affect any subsequent default or shall impair any rights or remedies consequent thereon.

SECTION 12. In case the Trustees shall have proceeded to enforce any right under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustees, then and in every such case the Company and the Trustees shall be restored to their former positions and rights hereunder with respect to the mort-

gaged property, and all rights, remedies and powers of the Trustees shall continue as if no such proceedings had been taken.

SECTION 13. No delay or omission of the Trustees, or of any holders of bonds hereby secured, to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Indenture to the Trustees, or to the bondholders, may be exercised, from time to time and as often as may be deemed expedient by the Trustees, or by the bondholders.

ARTICLE VIII.

EVIDENCE OF RIGHTS OF BONDHOLDERS.

Any request or other instrument, which this Indenture may require or permit to be signed and executed by the bondholders, may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such bondholders in person or by attorney appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, or of the holding by any person of the bonds or coupons appertaining thereto, shall be sufficient for any purpose of this Indenture if made in the following manner:

(a) The fact and date of the execution by any person of such request or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in any State, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution;

(b) The amount of bonds transferable by delivery held by any person executing such request or other instrument as a bondholder, and the issue numbers thereof, held by such person, and the date of his holding the same, may be proven by a certifi-

cate executed by any trust company, bank, bankers or other depositary wheresoever situated, if such certificate shall be deemed by the Trustees to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depositary, the bonds described in such certificate. The Trustees may nevertheless in their discretion require further proof in cases where they deem further proof desirable. The ownership of registered bonds shall be proved by the registry books as hereinbefore provided.

The Trustees shall not be bound to recognize any person as a bondholder unless and until his title to the bonds held by him is proved in the manner in this Article VIII provided.

ARTICLE IX.

DEFEASANCE.

If the Company, its successors or assigns, shall pay or cause to be paid unto the holders of said bonds and coupons, the principal and interest to become due thereon at the times and in the manner stipulated therein, and shall keep, perform and observe all and singular the covenants and promises in said bonds, and in this Indenture expressed as to be kept, performed and observed by it or on its part, then these presents and the estate and the rights hereby granted shall cease, determine and be void, and thereupon the Trustees shall, upon request of the Company, cancel and discharge the lien of this Indenture, and execute and deliver to the Company such deeds as shall be requisite to satisfy the lien hereof, and reconvey to the Company the estate and title hereby conveyed, and assign and deliver to the Company any property subject to the lien of this Indenture which may then be in their possession or the possession of either of them. Bonds for the payment or redemption of which money shall have been set apart by or paid to the Trustees shall be deemed to be paid within the meaning of this Article.

ARTICLE X.

IMMUNITY OF OFFICERS, STOCKHOLDERS AND DIRECTORS.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any bond or coupon hereby secured, or under any judgment obtained against the Company, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Indenture shall be had against any stockholder, officer or director of the Company, or of any successor corporation, either directly or through the Company, or otherwise, for the payment for or to the Company or any receiver thereof, or for or to the holder of any bond or coupon issued or secured hereunder or otherwise, of any sum that may be due and unpaid by the Company upon any such bond or coupon, and any and all personal liability of every name and nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such stockholder, officer or director to respond by reason of the non-payment of any stock or any act of omission or commission on his part or otherwise, for the payment for or to the Company or any receiver thereof, or for or to the holder of any bond or coupon issued or secured hereunder or otherwise, of any sum that may remain due and unpaid upon the bonds and coupons hereby secured or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and the issue of such bonds and coupons.

ARTICLE XI.

CONSOLIDATIONS, MERGERS, SALES AND LEASES.

SECTION 1. Nothing in this Indenture contained shall prevent any consolidation or merger of the Company with or into, or any conveyance, transfer or lease, subject to this Indenture, of all the mortgaged property, as an entirety, to any corporation lawfully entitled to acquire or lease

and operate the same; *provided, however,* and the Company covenants and agrees, that such consolidation, merger, conveyance, transfer or lease shall be upon such terms as in no respect to impair the lien of this Indenture, or any of the rights or powers of the Trustees or the bond-holders hereunder; and *provided, further,* that any such lease shall be made expressly subject to immediate termination by the Trustees at any time during the continuance of a default hereunder and also by the purchaser of the property so leased at any sale thereof hereunder, whether such sale be made under the power of sale hereby conferred or under judicial proceedings, and that, upon any such consolidation, merger, conveyance or transfer, the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the terms, covenants and conditions of this Indenture to be kept or performed by the Company, shall be assumed by the corporation formed by such consolidation or into which such merger shall have been made, or acquiring all the property subject to this Indenture as an entirety, as aforesaid.

SECTION 2. In case the Company, pursuant to Section 1 of this Article XI, shall be consolidated with or merged into any other corporation, or shall convey or transfer, subject to the lien of this Indenture, all the mortgaged property, as an entirety, the corporation resulting from such consolidation, or into which the Company shall have been merged, or which shall have received a conveyance or transfer, as aforesaid (such corporation being hereinafter called the successor corporation)—upon executing and causing to be recorded an Indenture with the Trustees, satisfactory to the Trustees, whereby the successor corporation shall assume and agree to pay the principal and interest of the bonds issued hereunder and secured hereby in accordance with the provisions of said bonds and coupons and this Indenture, and shall agree to perform and fulfill all the terms, covenants and conditions of this Indenture binding upon the Company—shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the

mortgagor company, and the successor corporation thereupon may cause to be signed, issued and delivered, either in its own name or in the name of Arkansaw Water Company, any or all of such bonds which shall not theretofore have been signed by the Company and certified by the Corporate Trustee, and upon the order of the successor corporation in lieu of the Company, and subject to all the terms, conditions and restrictions in this Indenture prescribed, touching the certification and issuance of bonds, the Corporate Trustee shall certify and deliver any of such bonds which shall have been previously signed and delivered by the officers of the Company to the Corporate Trustee for certification, and any of such bonds which the successor corporation shall thereafter, in accordance with the provisions of this Indenture, cause to be signed and delivered to the Corporate Trustee for such purpose. All the bonds so issued shall in all respects have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this Indenture as though all of said bonds had been issued at the date of the execution hereof.

Provided, however, that as a condition precedent to the execution by the successor corporation and the certification by the Corporate Trustee of any such additional bonds in respect of the making by the successor corporation of any permanent improvements, extensions or additions to or about its plant and property, the Indenture with the Trustees to be executed and caused to be recorded by the successor corporation as in this Article XI provided, shall contain a conveyance or transfer and mortgage in terms sufficient to include such permanent improvements, extensions and additions; and *provided, further,* that the lien created thereby shall have similar force, effect and standing as the lien of this Indenture would have if the Company should not be consolidated with or merged into such other corporation or should not convey or transfer, subject to this Indenture, all the property subject to this Indenture as an entirety, as aforesaid, to the successor corporation, and should itself make such permanent improvements, extensions and additions, and

request the certification and delivery of bonds under the provisions of this Indenture in respect thereof.

The Trustees may receive the certificate of any counsel (who may be of counsel to the Company) appointed by the Board of Directors of the Company and approved by the Trustees, as conclusive evidence that any such indenture complies with the foregoing conditions and provisions of this section.

SECTION 3. In case the Company, pursuant to Section 1 of this Article XI, shall be consolidated with or merged into any other corporation, or shall convey or transfer, subject to this Indenture, all the mortgaged property as an entirety, as aforesaid, neither this Indenture nor the indenture with the Trustees to be executed and caused to be recorded by the successor corporation, as in Section 2 of this Article XI provided, shall become or be a lien upon any of the properties or franchises of the successor corporation except those acquired by it from the Company, and permanent improvements, extensions and additions appurtenant thereto, and the permanent improvements, extensions and additions to or about the plant and property of the successor corporation, made and used by it as the basis for the issue of additional bonds under this Indenture, as herein provided, and such franchises, repairs and additional property as may be acquired by the successor corporation in pursuance of the covenants herein contained to maintain, preserve and renew the franchises covered by this Indenture and to keep and maintain the property covered by this Indenture in thorough repair, working order and condition, or in pursuance of some other covenant or agreement hereof to be kept or performed by the Company; but in case of any such merger the accounts of the merged Company shall be so kept that the earnings of the mortgaged properties can be at all times distinguished and all the covenants herein contained affecting the mortgaged property be fully performed.

SECTION 4. The word "Company" wherever herein contained shall include the successor corporation, and any order, certificate or resolu-

tions of the Board of Directors or officers of the Company provided for in this Indenture may be made by like officials of the successor corporation.

SECTION 5. At any time prior to the exercise of any power by this Article XI reserved to the Company or a purchasing or successor corporation, the Company may surrender any power so reserved to the Company or to such purchasing or successor corporation by delivering to the Trustees an instrument in writing executed by its President or a Vice-President under its corporate seal attested by its Secretary or Assistant Secretary, accompanied by the affidavit of its Secretary or Assistant Secretary that the execution of such instrument was authorized by the vote of two-thirds of the entire Board of Directors of the Company given at a meeting duly called and held, and thereupon the power so surrendered shall cease.

ARTICLE XII.

CONCERNING THE TRUSTEES.

The Trustees accept the trusts hereunder and agree to perform the same upon the terms and conditions hereof, including the following:

SECTION 1. The Trustees shall not be required to take notice of any default hereunder unless specifically notified in writing of such default by a holder of bonds then outstanding hereunder, and until so notified, the Trustees may assume that no default has happened. The Trustees shall not be under any obligation to take any action in respect of any default or otherwise, nor towards the execution or enforcement of any of the trusts hereby created, nor to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing so to do by the holders of twenty-five per cent in amount of the bonds then outstanding, and if in their opinion such action may tend to involve them in expense or liability, unless furnished from time to time as they may require with security and indem-

nity satisfactory to them; but this provision shall not affect any discretionary power herein given to the Trustees. For acting upon or in accordance with any notice, request, consent, certificate, bond, coupon or other document or paper believed by them to be genuine and to have been signed or presented by the proper person, or duly authorized or properly made, the Trustees shall not be liable to anybody. They may, however, in their discretion, require the production of any bond or bonds or other and further proof of the ownership thereof. Any request, consent or vote of the owner of any bond shall bind all future owners of the same instrument in respect of anything done or suffered by the Trustees in pursuance thereof.

The recitals and statements herein and in said bonds and coupons contained shall not be considered as made by or as imposing any obligation or liability upon the Trustees. The Trustees make no representation as to the validity of this Indenture, or of any bonds or coupons issued hereunder, nor as to the security hereby afforded, nor as to the title of the Company to the property hereby mortgaged. The Trustees shall be under no obligation to see to the recording, registration, filing or refiling of this Indenture or any instrument of further assurance, or to the giving of any notice thereof, or to see to the delivery to them of personal property intended to be mortgaged or pledged hereunder, or generally to see that any of the property intended now or hereafter to be conveyed in trust hereunder is subject to the lien hereof. The Trustees shall not be accountable for the use of any bond delivered hereunder or the application of the proceeds of the same.

The Trustees shall be under no duty in respect to any tax which may be assessed against them or against the owners of bonds hereunder in respect to the property hereby conveyed, nor in respect to any other prior liens, nor to see to the insurance of any part of the property hereby mortgaged or pledged. The Trustees may select and employ hereunder suitable agents and attorneys, and for their acts and neglects, if selected with reasonable care, the Trustees shall be in no wise responsible. The Trustees shall not be liable for any error of judgment or the exercise

of their discretion hereunder; but the Trustees may, in their discretion advise with legal counsel to be selected and employed by them at the expense of the Company, and shall be fully protected in any action under this Indenture taken by them in good faith in accordance with the opinion of such counsel. Finally, and generally, the Trustees, save for their own wilful default or gross negligence, shall not be personally liable to anybody.

The Company agrees, from time to time, on demand, to pay to the Trustees reasonable compensation for their services, to reimburse the Trustees for all their expenditures, and to indemnify and save the Trustees harmless against any liabilities which they may incur in the exercise and performance of their powers and duties hereunder; and for such indemnification, reimbursement and compensation a first lien is hereby imposed by the Company in favor of the Trustees upon the trust estate.

Whenever, in the administration of the trusts of this Indenture, the Trustees shall deem it necessary or desirable that any matter be proved or established prior to the Trustees taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the President or a Vice-President and the Treasurer or Assistant Treasurer of the Company and delivered to the Trustees, and such certificate shall be full warrant to the Trustees for any action taken or suffered by them under the provisions of this Indenture on the faith thereof; but in their discretion the Trustees may require such further or additional evidence as to them may seem reasonable; and the Trustees shall at all times be authorized to make examination by themselves or their agents of the affairs of the Company for the purpose of informing themselves as to the performance by the Company of all of its covenants hereunder, or for the purpose of advising the Trustees as to the exercise of any power hereunder, and the expense of any such examination shall be born by the Company.

The Corporate Trustee shall allow and credit upon any moneys which it may at any time receive or hold under any of the provisions of

this Indenture interest at such rates as it allows at the same time upon other deposits of similar character.

The Trustees may buy, sell or deal in the bonds and coupons secured hereby as freely as if they were not Trustees hereunder, and no trust relationship shall arise hereunder as to any such bonds or coupons which may be owned by either of said Trustees.

SECTION 2. Any Trustee may resign and be discharged from the trusts created by this Indenture by giving to the Company notice in writing, and to the bondholders notice by publication of such resignation, specifying a date when such resignation shall take effect, which notice shall be published at least once a week for two successive weeks prior to the date so specified, in one daily newspaper of general circulation published in each of the cities of Little Rock, Arkansas, New York and Chicago. Such resignation shall take effect on the day specified in such notice, unless previously a successor trustee shall have been appointed by the bondholders as hereinafter provided, in which event such resignation shall take effect immediately on the appointment of such successor trustee.

Any Trustee may be removed at any time by an instrument in writing, appointing a successor to the Trustee so removed, filed with each of the Trustees and executed by the holders of a majority in amount of the bonds hereby secured and then outstanding.

SECTION 3. In case at any time the Corporate Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in amount of the said bonds then outstanding, by an instrument in writing filed with the Trustees and executed by such bondholders; but until a new Corporate Trustee shall be appointed by the bondholders as herein authorized, the Company, by an instrument executed by order of its Board of Directors, shall appoint a Trustee to fill such vacancy. After any such appointment by the Company, it shall cause notice of such appointment to be

published once a week, for two successive weeks, in one daily newspaper of general circulation published in each of the cities of Little Rock, Arkansas, New York and Chicago, but any new Trustee so appointed by the Company shall immediately and without further act be superseded by a Trustee appointed in the manner above provided by the holders of a majority in amount of said bonds, whenever such appointment by said bondholders shall be made.

If in a proper case no appointment of a successor trustee shall be made pursuant to the foregoing provisions of this Article within six months after either the resignation of the Corporate Trustee or any successor shall have taken effect, or the Corporate Trustee or any successor shall have become incapable of acting, the holder of any bond hereby secured or the retiring Trustee may apply to any court of competent jurisdiction to appoint a successor trustee. Said court may thereupon after such notice, if any, as such court may deem proper and prescribed, appoint a successor trustee.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder and thereupon such successor trustee, without any further act, deed, conveyance or transfer, shall become vested with the title to the mortgaged premises, with all the rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder with like effect as if originally named as Trustee herein. Upon request of such successor trustee, the Company and the Trustee ceasing to act shall execute and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor trustee all the right, title and interest of the Trustee ceasing to act in and to the mortgaged premises and property and such rights, powers, trusts, duties and obligations, and the Trustee ceasing to act shall also, upon like request, assign and deliver to the successor trustee any property subject to the lien of this Indenture which may then be in its possession.

Every successor corporate trustee hereunder shall always be a trust company in good standing, organized under the laws of the State of New York, and doing business in the City of New York, or organized under the laws of Illinois and doing business in the City of Chicago, having a capital, undivided profits and surplus aggregating at least \$2,000,000, if there be such a trust company willing and able to accept such trust upon reasonable and customary terms.

SECTION 12. Frank H. Jones, one of the parties of the second part, has been joined as Individual Trustee hereunder, so that if, by any present or future law in any jurisdiction in which it may be necessary to perform any act in the execution of the trust hereby created, the Continental and Commercial Trust and Savings Bank, as Trustee, or its successor or successors, may be incompetent or unqualified to act as such Trustee, then all the acts required to be performed in such jurisdiction, in the execution of the trusts hereby created, shall and will be performed by said Frank H. Jones, as Trustee, or his successor or successors, acting alone. Except as it may be deemed necessary for the said Frank H. Jones solely to execute the trusts hereby created, the Continental and Commercial Trust and Savings Bank, Trustee, or its successor or successors may solely have and exercise the powers, and shall be solely charged with the performance of the duties herein declared on the part of the Trustees to be had and exercised or to be performed.

Any requests in writing by the Continental and Commercial Trust and Savings Bank, Trustee, or by any trust company appointed in succession to it, to the Individual Trustee hereunder, or to any Trustee appointed in succession to him, shall be sufficient warrant for the Individual Trustee or his successor or successors in taking such action as may be requested.

Such Individual Trustee or any successor or successors may delegate to the Continental and Commercial Trust and Savings Bank, Trustee, or any Trust Company, appointed in succession to it, the exercise of

any power, discretionary or otherwise, conferred by any provision of this indenture.

Said Continental and Commercial Trust and Savings Bank, as Trustee, and its successors from time to time in the trusts hereby created, shall have the power at any time, by an instrument in writing, duly executed by its President or Vice-President, under its seal, to remove said Frank H. Jones from his position as one of the Trustees hereunder, and to appoint some other officer of the Trust Company then acting as one of the Trustees hereunder, as successor-in-trust to the said Frank H. Jones, and any successor-in-trust, so appointed, in case of the removal of said Frank H. Jones as Trustee, or in case of the death, resignation, or inability to act of the said Frank H. Jones, shall be vested with all and singular, the same power and authority as is in this trust deed conferred upon the said Frank H. Jones.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS.

All the covenants, stipulations and agreements in this Indenture contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, and of the holders of the bonds and of the coupons hereby secured.

Whenever in this Indenture either of the parties hereto is named or referred to, it shall be deemed to include the successors and assigns of such parties, and all the covenants, promises and agreements in this Indenture contained by or on behalf of the Company, or by or on behalf of the Trustees, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

This Indenture may be simultaneously executed in any number of counterparts, and all said counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

IN WITNESS WHEREOF said ARKANSAW WATER COMPANY and said CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK have caused

these presents to be signed in their respective corporate names by their respective presidents or vice-presidents, and impressed with their respective corporate seals, attested by their respective secretaries or assistant secretaries, and said FRANK H. JONES has hereunto signed his name and affixed his seal, all as of the day and year first above written.

ARKANSAW WATER COMPANY,

[CORPORATE SEAL.]

By M. F. RILEY,

Attest:

President.

G. M. GADSBY,
Asst. Secretary.

Signed, sealed and delivered by
Arkansaw Water Company in
the presence of

REUBEN B. CRISPELL,
HARRY E. TOWLE.

CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK,

[CORPORATE SEAL.]

By JOHN JAY ABBOTT,

Attest:

Vice-President.

FRANK H. JONES,
Secretary.

Signed, sealed and delivered by
Continental and Commercial
Trust and Savings Bank in the
presence of

LEWIS C. DAVIS,
WALTER E. TOON.

FRANK H. JONES, Trustee.

Signed, sealed and delivered by
Frank H. Jones in the
presence of

LEWIS C. DAVIS,
WALTER E. TOON.

STATE OF NEW YORK}ss.
County of New York}

On this 29th day of January, 1916, personally appeared before me, the undersigned, a Notary Public duly commissioned and sworn to act both for the County of New York and in said State aforesaid, M. F. Riley, to me well known as the President of the Arkansaw Water Company, and G. M. Gadsby, to me well known as the Assistant Secretary of said Company, and they severally duly acknowledged that they had in their said official capacities executed the foregoing mortgage or deed of trust as the act and deed of said Company, for the consideration and purposes therein mentioned; and the said M. F. Riley further acknowledged that, as President of said Company, he executed said mortgage or deed of trust in the name of and under the corporate seal of said Company, which is affixed thereto; and the said G. M. Gadsby further acknowledged that, as Assistant Secretary of said Company, he duly attested the corporate seal of said Company; and they both severally duly acknowledged that the said mortgage or deed of trust is the act and deed of said Arkansaw Water Company, and that it and they in its behalf have executed the same for the consideration and purposes therein mentioned and set forth; and I do so certify.

Witness my hand and notarial seal the day and year hereinbefore written.

A. G. SWAN,
Notary Public.

Notary Public, Kings County,
Certificate Filed in New York County No. 216,
New York County Register No. 6390.

My Commission Expires
March 30, 1916.

STATE OF ILLINOIS } ss.
County of Cook }

On this 31st day of January, 1916, personally appeared before me, the undersigned, a Notary Public duly commissioned and sworn to act both for the County of Cook and in said State aforesaid, John Jay Abbott, to me well known as the Vice President of the Continental and Commercial Trust and Savings Bank, and Frank H. Jones, to me well known as the Secretary of said Continental and Commercial Trust and Savings Bank, and they severally duly acknowledged that they had in their said official capacities executed the foregoing mortgage or deed of trust as the act and deed of said Continental and Commercial Trust and Savings Bank, for the consideration and purposes therein mentioned; and the said John Jay Abbott further acknowledged that, as Vice President of said Continental and Commercial Trust and Savings Bank, he executed said mortgage or deed of trust in the name of and under the corporate seal of said Continental and Commercial Trust and Savings Bank, which is affixed thereto, and the said Frank H. Jones further acknowledged that, as Secretary of said Continental and Commercial Trust and Savings Bank, he duly attested the corporate seal of said Continental and Commercial Trust and Savings Bank, and they both severally duly acknowledged that the said mortgage or deed of trust is the act and deed of said Continental and Commercial Trust and Savings Bank and that it and they in its behalf have executed the same for the consideration and purposes therein mentioned and set forth; and I do so certify.

Witness my hand and notarial seal the day and year hereinbefore written.

L. E. FALK,
Notary Public.

My Commission Expires
October 29, 1918.

STATE OF ILLINOIS }
County of Cook } ss.

On this 31st day of January, 1916, personally appeared before me, the undersigned, a Notary Public duly commissioned and sworn to act both for the County of Cook and in said State aforesaid, Frank H. Jones, to me well known as one of the parties who executed the foregoing mortgage or deed of trust, and he duly acknowledged that he had executed the same for the consideration and purposes therein mentioned and set forth; and I do so certify.

Witness my hand and notarial seal the day and year hereinbefore written.

L. E. FALK,
Notary Public.

My Commission Expires
October 29, 1918.



3 0112 105646803